

## **LBNL – PROCUREMENT STANDARD PRACTICES**

**Section: 6 Competition Requirements**

**Subject: 6.2 Sole-Source Subcontracts**

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**PURPOSE:** This standard practice (SP) defines the criteria and procedures for justifying and processing sole-source subcontracts.

**POLICY:** For subcontracts that fall within the scope of this SP, competition shall not be restricted to a single source of supply unless a valid sole-source exists and is justified.

**SCOPE:** This SP applies to all:

- Subcontracts exceeding \$100,000 for which solicitation is restricted to one source and
- Modifications exceeding \$100,000 that increase the scope of work beyond that contemplated under the subcontract.

**Exceptions** This SP does not apply to:

- Intra-University transactions (see SP 44.1, *Intra-University Transactions*);
- Acquisitions from government sources of supply (see SP 8.2, *Government Sources — General*); or
- Consultant and Personal Services agreements (see SP 37.1, *Consultants and Personal Services*).

### **DEFINITIONS:**

**Competition** Competition is the process of soliciting offers from qualified entities in order to increase the likelihood of obtaining a proposal that provides the greatest overall benefit to the Laboratory.

**Market Research** Market research is the identification of goods and services available in the marketplace that can meet the Laboratory's minimum requirements.

**Market Survey** Market survey is the identification of source(s) in the marketplace that can supply the products identified by the market research.

**Request for Information (RFI)** A request for information is a written request for pricing information, technology capabilities, etc. Award of a subcontract cannot be made on the basis of responses to an RFI.

**Sole-Source** Sole-source, as used herein, means restricting competition to a single source of supply.

**Standardized Item** A standardized item is a specific product that has been evaluated by a requester, with a detailed statement of findings kept on file by the requester and furnished to Procurement, or previously competed to be requested in the future as a unique product/service on a no-substitution or sole-source basis. See SP 11.1, *Specifications and Standards — General*.

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### PROCEDURES:

#### **When Sole-Source May Be Appropriate**

A solicitation may be restricted to a sole-source if the need to restrict competition can be justified by one of the following reasons:

- Unique capability, expertise, facilities, or equipment that no other source can provide to satisfy the Laboratory's requirements;
- Standardization of parts and/or compatibility with existing equipment;
- Follow-on work for continued development or enhancement of goods or services when it is likely that award to a source other than the incumbent subcontractor would result in substantial duplication of costs (relative to overall costs) that would not be recovered or would cause unacceptable delays in fulfilling the program needs;
- An unusual or compelling urgency that would cause an adverse or programmatic impact of such a nature and magnitude that a sole source justification is merited;
- Industrial mobilization or engineering, development, or research capability;
- Identified source is acknowledged to be the leader in its field of expertise as demonstrated in reputable and valid literature, symposia presentations, etc. While normally not appropriate for commercial goods and services, this identification may be appropriate in subcontracting for research and development.
- International agreement;
- Authorized or required by statute;
- National security;
- Public interest; or
- Unique bonding, insurance or indemnification requirements (applies if a Large Business is selected in lieu of a Small Business).

#### **Sole-Source Justification**

A written sole-source justification must be in the procurement file for all sole-source subcontracts exceeding \$100,000. Use the *Berkeley Lab Justification for Sole Source, Large Business or IUT Procurement* form in the FormCab for this purpose. The sole-source justification form may be initiated by the requester or the procurement specialist, and both must work together to assure that the justification is appropriate and defensible. The sole-source justification must address the following information, as applicable:

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- Program/project/subcontract scope or statement of work;
- Salient features and/or capabilities required in order to perform;
- How potential sources were identified, evaluated, and rejected (market research and market survey techniques applied and their results);
- The potential for follow-on work and whether it can be competed;
- Why the recommended firm is uniquely qualified; and
- How and why the source is the only one that can meet the minimum programmatic needs of the Laboratory.

If a market survey was used to determine the sole-source, a synopsis of the market analysis must be included with the justification.

### **When Sole-Source Is Not Appropriate**

The following reasons are not acceptable justifications for restricting competition to a sole-source :

- Administrative convenience of the Laboratory;
- Belief by the requester that the sole-source subcontractor can provide the goods or services at the lowest cost;
- Request for sole-source subcontract by the DOE or other Federal agency without an appropriate sole-source justification;
- An unsolicited proposal, unless it provides unique approaches that are unavailable from other sources (see SP 15.9, *Unsolicited Proposals*);
- Contention that a subcontractor is uniquely qualified when such contention is not supported by facts but by opinions or assumptions; and
- Evidence of poor planning and if the action cannot pass the test of a valid non-competitive action.

### **Evaluating a Sole-Source Justification**

Upon receipt of a request for a sole-source subcontract, the justification must be reviewed to ensure that it is appropriate and defensible. The following actions, as appropriate, should be taken:

- Determining whether the justification is adequate and appropriate;
- Discussing any weaknesses in the justification with the requester; and
- Assisting the requester in rewriting or enhancing the

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justification if necessary.

### **Market Research/Market Survey**

Market research and/or a market survey should be performed, if necessary, to assist the requester in verifying the validity of the sole-source.

Possible means of doing this may include:

- Investigating suggestions offered by requesters, trade associations, professional organizations, and independent experts such as those at other laboratories and universities;
- Researching government bidders lists, catalogs, and standard registers of suppliers;
- Identifying potential offerors by publicizing the solicitation through distribution to a reasonable number of prospective offerors and use, as appropriate, of such means as plan rooms, journals, expressions of interest or other public notices, or the Federal Business Opportunities; and
- Consulting the following sources:
  - The Laboratory's Small Business and Supplier Management Office ;
  - Previous Laboratory subcontracts/agreements;
  - Industry representatives;
  - Reputable and valid industry publications/catalogs, product data sheets, symposia presentations, etc.;
  - Trade shows and industry workshops;
  - Compilation guides and registers (e.g., Federal Business Opportunities, Internet postings, and other public announcements); and
  - Expert Laboratory personnel.

### **REVIEW/ APPROVAL:**

Sole-source justifications must be authorized by individuals within the user and procurement organizations with approval authorities commensurate with the estimated value of the purchase request. For delegation of sole-source approval authority, refer to SP 1.2, *Delegation of Procurement Authority*.

### **RESPONSIBILITIES:**

#### **Requester**

The requester shall:

- Initiate the sole-source justification form most of the time (the procurement specialist may occasionally initiate it); and
- Review the sole-source justification with the procurement specialist in order to ensure that the justification is appropriate

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and defensible.

**Procurement  
Specialist**

The procurement specialist shall:

- Use the competitive process when multiple sources of supply are known to be available;
- Occasionally initiate the sole-source justification form (it is usually initiated by the requester);
- Review the sole-source justification with the requester in order to ensure that the justification is appropriate and defensible;
- If necessary, perform market research and/or a market survey in conjunction with the requesting activity; and
- Ensure that appropriate approval for the sole-source justification is obtained.

**REFERENCES:**

Prime Contract Clause I.114 – Contractor Purchasing System  
Prime Contract Clause I.49 – Competition in Subcontracting